the aqueous phase is present in at least 75% by weight with respect to the total weight of the composition;

the wax is present in at least 3% by weight with respect to the total weight of the composition;

the solid composition exhibits a compressive strength of greater than or equal to 50 grams, at room temperature, after penetration by a cylindrical probe having a diameter of 0.8 cm into the composition over a thickness of 5 mm at a rate of 1 mm/s;

the oily phase/silicone emulsifier ratio by weight is equal to or greater than 5;

the composition comprises at least 70% water with respect to the total weight of the composition; and

the composition is grainy.

SUPPORT FOR AMENDMENTS

Support for the amendments to claim 1 can be found, *inter alia*, at page 9, lines 28-30. Claims 1, 3-21 and 23-28 are currently pending.

REJECTIONS UNDER 35 U.S.C. §103

The Office Action rejected claims 1, 3-21 and 23-28 under 35 U.S.C. § 103 as obvious over U.S. patent 5,851,539 ("Mellul"), either alone or in combination with U.S. patent 5,919,468 ("Bara") or KR 9202286 ("Kang"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The pending claims relate to solid, grainy compositions comprising an aqueous phase dispersed in an oily phase, a silicone emulsifier, and at least 3% wax, wherein the composition comprises at least 70% water, the aqueous phase represents at least 75% of the

composition, and the oily phase/silicone emulsifier ratio by weight is equal to or greater than 5. Thus, the presently claimed invention is directed to solid, grainy water-in-oil (W/O) compositions having a large amount of aqueous phase and water, while having a relatively small amount of silicone emulsifier.

Mellul neither teaches nor suggests such solid, grainy W/O emulsions, nor does this reference provide any motivation to modify the compositions disclosed therein to yield such compositions.

First, Mellul neither teaches nor suggests that her compositions are grainy. In contrast, the claimed compositions are grainy. Graininess provides the claimed emulsions with a range of textures, thereby contributing to their fresh feeling, which non-grainy compositions do not possess. (Page 9, lines 28-30). Such graininess is believed to result from the relatively small amount of oil and relatively large amount of water present in the claimed compositions as well as the required compressive strength characteristics (that is, solid nature) of these compositions.

Second, Mellul neither teaches nor suggests that her compositions have the claimed compressive strength characteristics. In contrast, the claimed compositions possess the required compressive strength characteristics and, thus, are solid.

Third, Mellul's compositions do not contain at least 70% water ***and*** an aqueous phase of at least 75%.[1]

---

[1] Mellul states that her compositions' aqueous phase could be 10-90% of the composition. (Col. 7, line 51). However, Mellul does not indicate how much of the aqueous phase should be water. In fact, Mellul's examples actually lead one skilled in the art away from such compositions. Mellul's examples 1-15 and 22-25 contain 70% water, 5-10% surfactant and 20-25% oil. As Mellul's examples incorporate more ingredients, the amount of water decreases. (See, examples 26-33). Thus, based on Mellul's disclosure, one skilled in the art, seeking to produce compositions containing ingredients in addition to water, oil and surfactant, would use less than 70% water.

Fourth, Mellul's compositions are not required to contain at least 3% wax.[2]

Thus, Mellul fails to teach, suggest or recognize the importance of several of the required individual elements of the claimed invention, and nothing in Mellul suggests modifying **all** of these elements to yield the claimed invention. This lack of suggestion to modify all of these elements is particularly significant given that the required grainy nature of the claimed compositions is believed to result from the high water content, the low oil content and the compressive strength characteristics set forth in the pending claims.

Bara and Kang do not compensate for Mellul's deficiencies. Bara relates to using certain organopolysiloxanes to mattify skin. Kang relates to emulsions containing electrolytes. Neither of these references teaches or suggests solid, grainy w/o compositions containing all of the claimed invention's required elements including a silicone surfactant, at least 70% water, at least 75% aqueous phase and at least 3% wax.

In view of the above, Applicants respectfully submit that the rejection under 35 U.S.C. §103 should be withdrawn.

---

[2] Mellul merely states that waxes **can** be incorporated into her emulsions as part of the oil phase (col. 6, lines 27-36), but does not state that waxes **must** be present (or that they must be present in a specified amount). Moreover, Mellul does not exemplify any compositions containing wax. In contrast, the claimed invention requires the presence of at least 3% wax.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

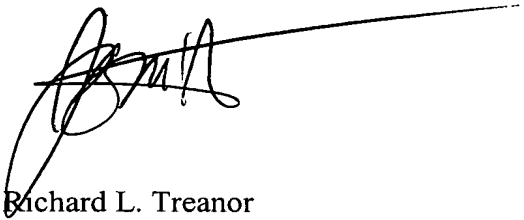
Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

22850

Tel #: (703) 413-3000
Fax #: (703) 413-2220

I:\USER\JBMC\L'OREAL\193022 AMD MAY 03.DOC



Richard L. Treanor
Attorney of Record
Registration No. 36,379

Jeffrey B. McIntyre
Registration No. 36,867

Marked-Up Copy

Serial No: 09/610,320
Amendment Filed on:
May 1, 2003

1. (Thrice amended) A solid composition comprising
an aqueous phase, and
an oily phase, which includes
a silicone emulsifier and
a wax, wherein
the aqueous phase is dispersed in the oily phase;
the aqueous phase is present in at least 75% by weight with respect to the total weight of the composition;
the wax is present in at least 3% by weight with respect to the total weight of the composition;
the solid composition exhibits a compressive strength of greater than or equal to 50 grams, at room temperature, after penetration by a cylindrical probe having a diameter of 0.8 cm into the composition over a thickness of 5 mm at a rate of 1 mm/s;
the oily phase/silicone emulsifier ratio by weight is equal to or greater than 5; [and]
the composition comprises at least 70% water with respect to the total weight of the composition; and
the composition is grainy.